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6 Attorneys for Plaintiff  
HOLLIS D'AMORE

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8  
9 UNITED STATES DISTRICT COURT  
10  
11 NORTHERN DISTRICT OF CALIFORNIA

12 HOLLIS D'AMORE, an individual, ) Case No.  
13 )  
14 Plaintiff, ) **VERIFIED COMPLAINT FOR DAMAGES**  
15 )  
16 v. ) **JURY TRIAL DEMANDED**  
17 )  
18 WILSHIRE COMMERCIAL CAPITAL, )  
19 L.L.C. dba WILSHIRE CONSUMER )  
CREDIT and DOES 1 through 20, )  
inclusive, )  
Defendants. )  
 )  
 )

20  
21 **I. INTRODUCTION**

22 1. Defendants made repeated telephone calls to  
23 Plaintiff's work and to Plaintiff's family in connection with an  
attempt to collect a debt, despite Plaintiff's repeated requests  
24 they cease, and without her consent. In or about November 2013,  
25 Plaintiff took out a consumer loan with Defendant Wilshire  
Commercial Capital, L.L.C. dba Wilshire Consumer Credit. In

1 December 2013, Plaintiff was \$23.00 short in her payment.  
2 Defendant immediately called Plaintiff threatening that if she  
3 did not pay Defendant would call her references. Defendant did,  
4 in fact, call Plaintiff's daughters and called Plaintiff's place  
5 of employment after Plaintiff told Defendant to stop calling her  
6 employment.

7       2. Defendant used automated dialing systems, and pre-  
8 recorded messages to telephone Plaintiff's cellular phones in  
9 violation of the Telephone Consumer Protection Act, and the  
10 Rosenthal Fair Debt Collection Practices Act.

12       3. Plaintiff suffered physical and emotional injury,  
13 including severe and substantial emotional distress, and actual  
14 damages including but not limited to, anxiety, emotional  
15 distress, stress, frustration, loss of concentration, amongst  
16 other injuries.

17       4. This is an action for damages brought by a consumer to  
18 redress the Defendant's violations of California's Rosenthal  
19 Fair Debt Collection Practices Act, Civil Code Section 1788 et  
20 seq. (hereinafter, "state act"), and related common law claims,  
21 which prohibit debt collectors from engaging in abusive,  
22 deceptive and unfair practices in their collection of consumer  
23 debts. In 2000, the California legislature incorporated most of  
24 the Federal Fair Debt Collection Practices Act (15 U.S.C. §  
25

1 1692, et seq.) into the California FDCPA. See Civil Code  
2 §1788.17.

3 5. According to 15 U.S.C. § 1692:

4 There is abundant evidence of the use of abusive,  
5 deceptive, and unfair debt collection practices  
6 by many debt collectors. Abusive debt collection  
7 practices contribute to the number of personal  
bankruptcies, to marital instability, to the loss of  
jobs, and to **invasions of individual privacy**.

8

9 **II. JURISDICTION AND VENUE**

10 6. Jurisdiction of this Court arises under 15 U.S.C. §  
11 1692k(d), 28 U.S.C. § 1337, and supplemental jurisdiction exists  
12 for the state law claims pursuant to 28 U.S.C. § 1337. Venue in  
13 this District is proper in that Defendant transacts business  
14 here and the conduct complained of occurred here.

15 **III. PARTIES**

16 7. Plaintiff HOLLIS D'AMORE, (hereinafter "Plaintiff") is  
17 a natural person residing in Contra Costa County in the State of  
18 California.

20 8. On information and belief, Defendant WILSHIRE  
21 COMMERCIAL CAPITAL, L.L.C. dba WILSHIRE CONSUMER CREDIT is a  
22 foreign business corporation doing business in California  
23 (hereinafter "WILSHIRE") WILSHIRE, in the ordinary course of  
24 business, regularly attempts to collect debts on its own behalf.

1       9. Defendant WILSHIRE is a "debt collector" as defined by  
2 California Civil Code § 1788.2.

3       10. Defendants DOES 1 through 10 are persons or entities  
4 whose true names and capacities are presently unknown to  
5 Plaintiff, and who therefore are sued by fictitious names.  
6 Plaintiff is informed and believes and thereon alleges that each  
7 of the fictitiously named Defendants perpetrated some or all of  
8 the wrongful acts alleged herein, is responsible in some manner  
9 for the matters alleged herein, and is jointly and severally  
10 liable to Plaintiff. Plaintiff will seek leave of court to  
11 amend this complaint to state the true names and capacities of  
12 such fictitiously named Defendants when ascertained.

14       11. At all times mentioned herein, each Defendant was the  
15 agent or employee of each of the other Defendants and was acting  
16 within the course and scope of such agency or employment. The  
17 Defendants are jointly and severally liable to the Plaintiff for  
18 their conduct. Defendants approved, authorized and/or ratified  
19 the wrongful acts and omissions herein.

20       12. Any reference hereinafter to "Defendant" or  
21 "Defendants" or "WILSHIRE", without further qualification, is  
22 meant by Plaintiff to refer to such Defendants named above.

23       ///

24       ///

1                   **IV. FIRST CAUSE OF ACTION - ROSENTHAL FDCPA**

2           13. Plaintiff repeats, re-alleges, and incorporates by  
3 reference all of the paragraphs above as though fully stated  
4 herein.

5           14. The foregoing acts and omissions by these Defendants  
6 with respect to Plaintiff in their attempts to collect a  
7 consumer debt from Plaintiff constitutes numerous and multiple  
8 unfair, deceptive, misleading practices made unlawful pursuant  
9 to the California Rosenthal Fair Debt Collection Practices Act,  
10 including but not limited to Civil Code §§ 1788-1788.32,  
11 including §§ 1788.11(d), 1788.11(e), 1788.12(b), and 1788.17 by  
12 violating 15 U.S.C. §§ 1692b(2) and (3), 1692c(a) and (b), 1692d  
13 and d(5), 1692e and e(5), and 1692f.

15           15. Plaintiff is entitled to recover statutory damages,  
16 actual damages, reasonable attorney's fees and costs.

18           **V. SECOND CAUSE OF ACTION - INTRUSION UPON SECLUSION**

19           16. Plaintiff repeats, re-alleges, and incorporates by  
20 reference all of the paragraphs above as though fully stated  
21 herein.

22           17. The foregoing acts of Defendants as described herein  
23 constitute an invasion of the Plaintiff's privacy and an  
24 intrusion upon their right of seclusion.

18. Plaintiff has a common law right to, and a reasonable expectation of privacy, her home and place of employment, and in regards to her private affairs.

19. Defendants' abusive and improper collection practices in the collection of this debt constituted a substantial invasion upon Plaintiff's seclusion and privacy, and would be highly offensive to a reasonable person.

20. Defendants intended to cause emotional distress and/or engaged in reckless disregard of the probability of causing Plaintiff's emotional distress.

21. As a proximate result of Defendants' conduct, Plaintiff has suffered damages in an amount to be determined by proof and a finder of fact at trial.

22. Defendants acted with oppression, fraud, and/or malice, thereby entitling Plaintiff to punitive damages in an amount according to proof and a finder of fact at trial.

## VI. THIRD CAUSE OF ACTION - TCPA

23. Plaintiff repeats, re-alleges and incorporates by reference all other paragraphs.

24. At all times relevant to this complaint, the Plaintiff was and is a "person" as defined by the TCPA 47 U.S.C. § 153(32).

1       25. At all times relevant to this complaint, the Defendant  
2 has owned, operated, and or controlled "customer premises  
3 equipment" as defined by the TCPA 47 U.S.C. § 153(14) that  
4 originated, routed, and/or terminated telecommunications.

5       26. The Defendant at all times relevant to the complaint  
6 herein engages in "telecommunications" defined by the TCPA  
7 U.S.C. § 153(43).

8       27. The Defendant at all times relevant to the complaint  
9 herein engages in "interstate" communications by the TCPA U.S.C.  
10 § 153(22).

12       28. At all times relevant to this complaint, the Defendant  
13 has used, controlled, and/or operated "wire communications" as  
14 defined by the TCPA 47 U.S.C. § 153(52), that existed as  
15 instrumentalities of interstate and intrastate commerce.

16       29. At all times relevant to this complaint, the Defendant  
17 has used, controlled, and/or operated "automatic telephone  
18 dialing systems" as defined by the TCPA 47 U.S.C. § 227(a)(1)  
19 and 47 C.F.R. § 64.1200(f)(1).

20       30. Defendant violated the TCPA, 47 U.S.C. § 227(b)(1)(A),  
21 by using an automatic telephone dialing system to telephone  
22 Plaintiff's cellular phone in an attempt to collect an alleged  
23 debt.

24       31. Defendant frequently made calls to Plaintiff's cell  
25 phone using an automatic telephone dialing system (including an

1 automated dialing machine, dialer and auto-dialer) and/or an  
2 artificial or prerecorded voice.

3       32. Defendants violated the Telephone Consumer Protection  
4 Act ("TCPA") 47 U.S.C. § 227(b)(1)(A), by using an automatic  
5 telephone dialing system to telephone a cellular phone, without  
6 Plaintiff's consent.

7       33. Defendants' violations were willful and knowing.

8       34. As a result of these violations of the TCPA,  
9 Defendants are liable to Plaintiff for statutory damages,  
10 including treble damages.

11       35. Defendants engaged in willful and knowing violations  
12 of the Telephone Consumer Protection Act ("TCPA") 47 U.S.C. §  
13 227(b)(1)(A).

14       36. Defendants' acts were willful, intentional and  
15 knowing.

16       37. Defendants acted with oppression, fraud, and/or  
17 malice, thereby entitled Plaintiff to punitive damages in an  
18 amount according to proof and a finder of fact at trial.

19       38. Plaintiff is entitled to recover actual and punitive  
20 damages.

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22       ///

23       ///

1                   **VII. FOURTH CAUSE OF ACTION - NEGLIGENCE**

2       39. Plaintiff repeats, re-alleges, and incorporates by  
3 reference all of the paragraphs above as though fully stated  
4 therein.

5       40. Defendants' outrageous, abusive and intrusive acts as  
6 described herein constituted negligent infliction of emotional  
7 distress.

8       41. Plaintiff suffered (1) serious emotional distress, (2)  
9 actually and proximately caused by (3) wrongful conduct (4) by a  
10 defendant who should have foreseen that the conduct would cause  
11 such distress.

13       42. Defendants' conduct as described herein was wrongful  
14 conduct in that the Defendants conducted their business in an  
15 abusive, oppressive, and harassing manner.

16       43. Defendants' actions and omissions as described herein  
17 constitute negligence in that Defendants owed Plaintiff a duty  
18 of reasonable care in the collection of the alleged debt, and  
19 use of the telephone in an attempt to collect such debts, said  
20 duties were breached, and said breach was the proximate cause of  
21 damages suffered by Plaintiff.

22       44. Defendants owed a duty to refrain from outrageous and  
23 unlawful calls in connection with their attempts to collect a  
24 debt.

1       45. Defendants' actions and omissions demonstrate a  
2 conscious disregard of the rights or safety of others, and  
3 constitute despicable conduct that subjected Plaintiff to cruel  
4 and unjust hardship in conscious disregards of her rights.

5       46. Plaintiff suffered damages due to Defendants' actions  
6 in an amount to be determined at trial.

7       47. Plaintiff is entitled to punitive damages for the  
8 actions and omissions of the Defendants as described herein.

10  
11       **VIII. FIFTH CAUSE OF ACTION - NEGLIGENT TRAINING AND**  
12       **SUPERVISION**

13       48. Plaintiff incorporates by reference the above  
14 paragraphs as though fully stated herein below.

15       49. Defendant negligently trained and supervised their  
16 employees and agents as to the performance of their job duties  
17 and as a result of such negligent instruction and supervision,  
18 the employees/agents while carrying out their job duties caused  
19 injury and damage to Plaintiff.

20       50. As a direct and proximate result of Defendant's  
21 unlawful conduct, Plaintiff has suffered damages in an amount to  
22 be determined at trial.

23       51. Defendant acted with oppression, and/or malice,  
24 thereby entitled Plaintiff to punitive damages in an amount to

1 be determined at trial. Defendant acted in a despicable manner  
2 and acted with a conscious disregard to the rights of Plaintiff.

3 WHEREFORE, Plaintiff respectfully prays that judgment be  
4 entered against the Defendants for the following:

- 5 A. Statutory and actual damages pursuant to  
6 California Civil Code § 1788 et seq.;
- 7 B. Costs and reasonable attorney's fees pursuant to  
8 Civil Code § 1788 et seq.;
- 9 C. Actual and punitive damages;
- 10 D. Award statutory damages in the amount of  
11 \$500.00 for each violation of the TCPA against  
12 All of the Defendants, and/or treble damages for  
13 each willful or knowing violation of the TCPA  
14 pursuant to 47 U.S.C. §227(b)(3)(B).
- 15 E. For such other and further relief as may be  
16 just and proper.

18 DATED: April 30, 2014

19 Respectfully submitted,

20 DELTA LAW GROUP

21 BY: 

22 JIM G. PRICE  
23 Attorneys for Plaintiff  
24 HOLLIS D'AMORE

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**DEMAND FOR JURY TRIAL**

Please take notice that Plaintiff demands trial by jury in this action.

DATED: April 30, 2014

DELTA LAW GROUP

BY:

JIM G. PRICE  
Attorneys for Plaintiff  
HOLLIS D'AMORE

## VERIFICATION

I, HOLLIS D'AMORE, declare:

I am the Plaintiff in this action. I have read the foregoing document entitled: **COMPLAINT FOR DAMAGES** and know the contents thereof. The same is true of my own knowledge, except as to those matters stated therein on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 30<sup>th</sup> day of April, 2014, at Brentwood,  
California.

  
DENNIS J. BLAWIE

HOLLIS D'AMORE